

REMARKS

Applicant has carefully studied the Final Office Action of February 28, 2006, and offers the following remarks to accompany the above amendments.

Claims 1-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wolfe in view of Gervais. Applicant respectfully traverses. For the Patent Office to establish *prima facie* obviousness, the Patent Office must show where each and every claim element can be found in the combination of references. MPEP § 2143.03. When determining whether the references or combination of references teaches an element, the Patent Office is entitled to interpret the claim elements broadly. However, this interpretation is limited in several respects. First, the interpretation is made in light of the specification. Further, the interpretation must be reasonable to someone skilled in the art. MPEP § 2111.

Applicant previously argued that the claimed invention is directed to the reselling of files, not generating income through referred sales of items, as taught by Wolfe. More specifically, Applicant argued that specific elements of claim 1 were not taught by Wolfe. In particular, Wolfe does not teach the following elements of claim 1: "maintaining a data repository for storing information relating to the files available in the digital marketplace" and "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . ."

Claim 1 specifically recites "maintaining a data repository for storing information relating to the files available in the digital marketplace." Applicant has studied Wolfe and finds no teaching wherein the files are available for sale, as indicated in the claim. In the Final Office Action, the Patent Office responds that "Wolfe is directed to electronic commerce transactions and more specifically to a system, method, and storage medium for generating a commission link. Wolfe does not limit the invention to merely reselling files, but rather to any items for sale in an electronic environment." (Final Office Action mailed February 28, 2006, p. 2)¹ The Examiner has proven Applicant's point that Wolfe is specifically directed to generating a commission link, and not to reselling particular files available in the digital marketplace. Wolfe teaches items for sale in an electronic environment, but does not expressly disclose reselling

¹ The Examiner admits that Gervais was introduced merely for the assertion that it demonstrated automatic disbursement to all interested parties. Therefore, Gervais does not teach a reseller or the reselling of files.

files. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Although Wolfe may teach items for sale, it does not expressly describe the reselling of files, as claimed in claim 1. Therefore, Wolfe cannot anticipate claim 1.

Claim 1 further recites "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . . ." Thus, the claim requires that a first user requests to resell a particular file and thereby becomes a reseller, and that the data repository is used to dynamically generate a RURL that uniquely identifies the reseller and the file. In contrast, Wolfe teaches an affiliate program wherein an affiliate earns commissions for referring customers to a merchant site. The customer purchases directly from the merchant web site and the affiliate gets the commission. At no time is the affiliate ever a reseller as that term is used in the Specification. Certainly no one of ordinary skill in the art would consider an affiliate who does not sell any product to be a reseller. The passage previously cited by the Examiner (Wolfe, col. 15, lines 20-25, at page 8, paragraph 0080) discusses the relationship between the affiliate and the website, indicating that the affiliate retains control over the customer's browser. The passage confirms that the user performs an action on the merchant site 40, effectively proving that the affiliate is not the entity from whom the customer makes the purchase (and thus precluding the affiliate from being the reseller of the claim).

The Examiner responds in the Final Office Action by initially stating that "[a]lthough the applicant may be referring to a link as a reseller URL, Wolfe teaches the same mechanism in tracking and collecting commission and sales revenue as recited in the claimed invention. Furthermore, applicant's distinction between a frame controlled by a merchant or not is irrelevant as to the in (sic) both the invention and Wolfe a link is generated to accomplish the stated provisions." (Final Office Action mailed February 28, 2006, p. 2) Secondly, the Examiner cites paragraph 0027 of Wolfe. Finally, the Examiner cites Wolfe paragraph 0044 as teaching that the most basic complication is that many merchants do not offer their affiliates the opportunity to link to individual products, and therefore, Wolfe's affiliate can be both affiliate and reseller.

The Examiner seems to be missing Applicant's point. The claim requires "in response to a first user requesting to resell a particular file and thereby becoming a reseller." Wolfe does not disclose a first user requesting to resell a particular file and thereby becoming a reseller. Nor does Wolfe teach that in response to the user requesting to resell a particular file, the data repository is used to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. Even if Wolfe teaches the same mechanism for tracking and collecting commission and sales revenue, a point Applicant does not concede, it does not teach the specific limitations of the claim. The Examiner seems to be trying to ignore the specific language of the claim, which requires "in response to a first user requesting to resell a particular file and thereby becoming a reseller, using the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file."

Paragraph 0027 of Wolfe discusses how, when the consumer is linked to the affiliate's web site, a tracking process may be triggered, and when the affiliate web server redirects the consumer to the merchant web site, the merchant web site continues the tracking process and reports sales and commissions back to the affiliate network. After redirection, the URL displayed in the consumer's browser corresponds to the merchant web site so that in most cases, the consumer is unaware that he or she was first directed to the affiliate web site. While the consumer may not be aware that he or she has been redirected to the merchant web site, and the merchant web site may track sales and commissions, this paragraph still does not teach a "first user requesting to resell a particular file and thereby becoming a reseller." In addition, the URL displayed is that of the merchant, and is therefore not a RURL that uniquely identifies the reseller and the file, as required by claim 1.

Finally, the Examiner's cite to paragraph 0044 of Wolfe as supporting the theory that Wolfe's affiliate can be both affiliate and reseller does not support the alleged theory. The fact that Wolfe may disclose that many merchants do not offer their affiliates the opportunity to link to individual products does not mean the affiliate is a reseller. Moreover, there is nothing in paragraph 0044 or the rest of Wolfe that teaches a "first user requesting to resell a particular file and thereby becoming a reseller." The affiliate of Wolfe does not request to resell a particular file and thereby becomes a reseller. Moreover, as discussed above, since the URL displayed is that of the merchant and not the affiliate, Wolfe does not teach using the data repository to

dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file, as required by claim 1. Therefore, Wolfe does not teach this claim element.

As set forth above, Wolfe does not teach or suggest each and every element of claim 1. Nothing in Gervais cures the deficiencies of Wolfe. Since the references individually do not teach or suggest the claim elements, the combination of references cannot teach or suggest the claim elements. Since the combination does not teach or suggest the claim elements, the combination does not establish obviousness, and the claim is allowable for this reason.

Claims 2-14 depend from claim 1 and are not obvious for at least the same reasons.

Claim 15 is substantially similar to claim 1, albeit in a computer software format. Thus, claim 15 is non-obvious for at least the same reasons.

Claims 16-28 depend from claim 15 and are not obvious for at least the same reasons.

Claim 29 recites, in relevant part, essentially the same elements as claim 1. That is, claim 29 recites "a data repository accessible by the server for storing information relating to the files available in the digital marketplace. . ."; "a first user contacting the server and requesting to resell a particular file and thereby becoming a reseller. . ."; and "uses the data repository to dynamically generate a reseller uniform resource locator (RURL) that uniquely identifies the reseller and the file. . ." These correspond to the elements addressed above. As explained above, Wolfe and Gervais do not teach or suggest these elements, and therefore claim 29 is not obvious. Claims 30-42 depend from claim 29 and are not obvious for at least the same reasons.

Some dependent claims deserve special mention. Claims 4, 18, and 32 recite the limitation of providing each record with a file ID, a file name, a content owner ID, metafile information, a fingerprint, and the business rules. The Examiner states that paragraphs 0043, 0074-0077, 0085, and 0086 of Wolfe discloses these elements. Applicant has reviewed these passages and does not find a teaching of providing each record with all of the claimed information. The closest Applicant finds is the teaching of an affiliate identity code. This teaching of Wolfe is not equivalent to providing each record with a file ID, a file name, a content owner ID, metafile information, a fingerprint, and the business rules. Claims 6, 20, and 34 depend from claims 4, 18, and 32 respectively, and add the further limitation that the fingerprint is used to uniquely identify each file by content of the file. The affiliate identity code, merchant identifier and product identifier of Wolfe discussed in paragraphs 0052-0062 are not a fingerprint that is used to uniquely identify each file by content of the file. Nothing in Gervais cures the

deficiencies of Wolfe. Since the references individually do not teach or suggest the claim element; thus, the combination of references cannot teach or suggest the claim element, and the claims are non-obvious. Since the claims are non-obvious, claims 4, 18, and 32 are independently patentable over the rejection of record.

Claims 5, 19, and 33 recite that the rules have a redistributable indicator that indicates whether the file is redistributable. The Patent Office asserts this is shown by Wolfe, paragraph 0027. The Examiner did not specifically respond to Applicant's previous arguments that, while paragraph 0027 does describe the process of linking to the affiliate network, there is nothing in the passage that indicates the file is redistributable. Redirection is not the same as redistribution. Applicant therefore incorporates its previous remarks and submits that the Patent Office has failed to show that Wolfe discloses the redistributable indicator of claims 5, 19, and 33. Nothing in Gervais cures the deficiencies of Wolfe. Since the references individually do not teach or suggest the claim elements, the combination of references cannot teach or suggest the claim elements, and the claims are non-obvious. Since the claims are non-obvious, the claims are independently patentable over the rejection of record.

Applicant requests reconsideration of the rejection in light of the remarks presented herein. Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

<p>CERTIFICATE OF TRANSMISSION I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:</p> <p>Examiner: <u>Bradley B. Bayat</u> Art Unit: <u>3621</u> Fax: <u>571-273-8300</u></p> <p><u>Jennifer Allare</u> Name of Sender</p> <p><u>Jennifer Allare</u> Signature</p> <p><u>April 28, 2006</u> Date of Transmission</p>

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:

Benjamin S. Withrow
Registration No. 40,876
P.O. Box 1287
Cary, NC 27512
Telephone: (919) 654-4520

Date: April 27, 2006
Attorney Docket: 1104-034